TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 344.

THE NORTHERN PACIFIC RAILROAD COMPANY,
PLAINTIFF IN ERROR,

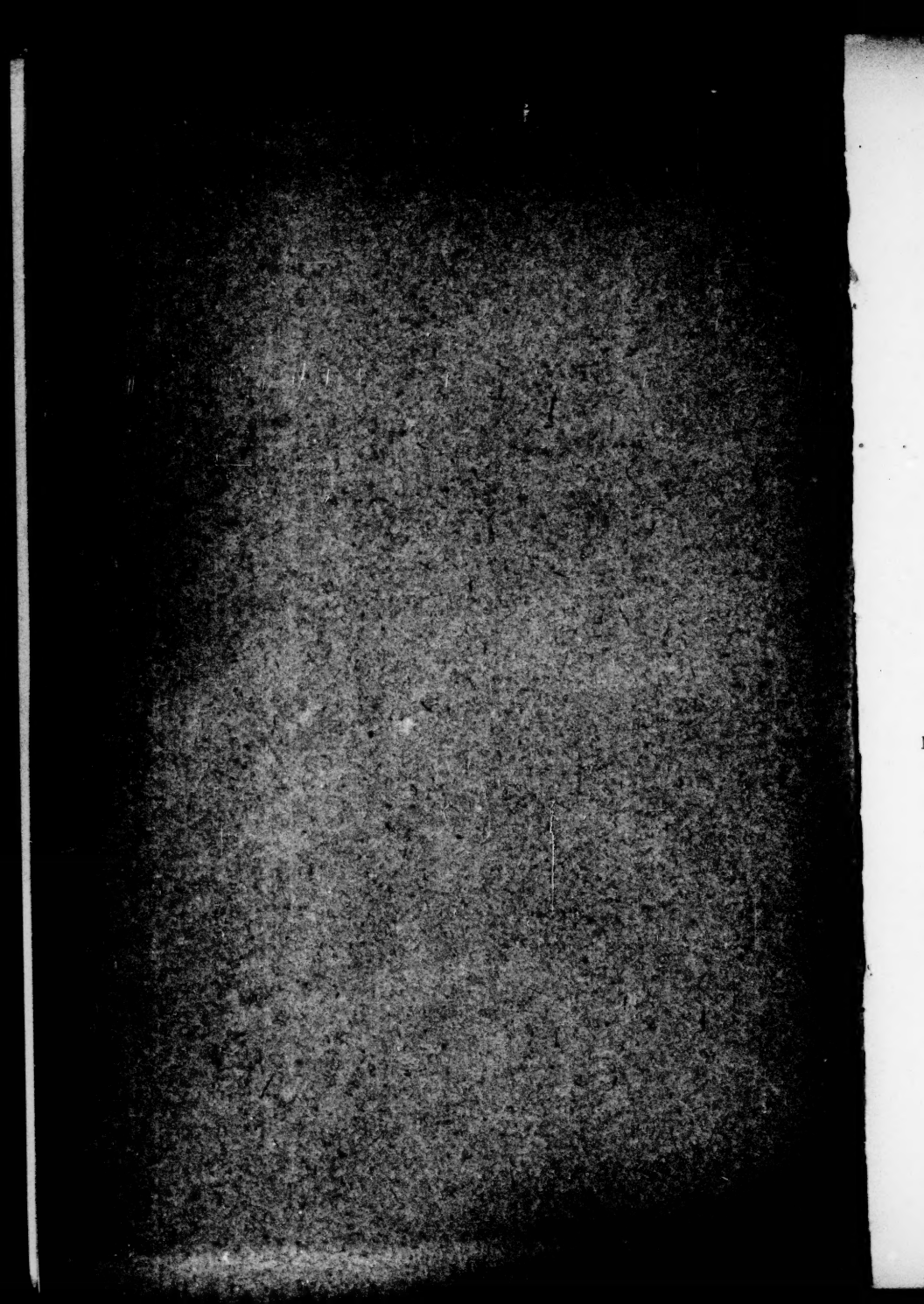
vs.

GEORGE C. RAGSDALE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED NOVEMBER 16, 1903.

(14,931.)



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INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Caption	3	2
Transcript from State court	4	2
Answer	4	2
Petition for removal	7	4
Bond for removal	9	5
Clerk's certificate	12	6
Summons	14	7
Complaint	15	7
Amended complaint	21	10
Reply	28	14
Answer to amended complaint	31	15
Amended answer	35	17
Reply	41	19

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	Original.	Print.
Stipulation waiving jury	43	20
Demurrer to amended answer	45	20
Opinion of Judge Shiras on demurrer, April 7, 1890	47	21
Order sustaining demurrer	57	25
Opinion of Judge Shiras, June 16	59	26
Exceptions to order sustaining demurrer	65	29
Order amending order sustaining demurrer	67	29
Judgment	69	30
Stipulation waiving bond	70	30
Stipulation correcting record	71	30
Clerk's certificate	72	31

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between George C. Ragsdale, plaintiff, and The Northern Pacific Railroad Company, defendant, a manifest error hath happened, to the great damage of the said defendant, as is said, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceeding- aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fourteenth.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

OSCAR B. HILLIS,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

2 UNITED STATES OF AMERICA, *ss:*

To George C. Ragsdale, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Minnesota, wherein The Northern Pacific Railroad Company is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of June, A. D. 1891.

R. R. NELSON, *Judge.*

3 UNITED STATES OF AMERICA:

GEORGE C. RAGSDALE, Plaintiff,
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota, of the June term of said court, held at the city of Saint Paul, in said district, in the year of our Lord one thousand eight hundred and ninety (1890).

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on this 15th day of November, A. D. 1889, came McDonald & Barnard, attorneys for plaintiff, and filed the return from the State court of Ramsey county in words and figures as follows, to wit:

4 STATE OF MINNESOTA,
County of Ramsey.

District Court.

GEO. C. RAGSDALE, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Answer.

I.

For its first defense to the cause of action stated in the complaint herein the above-named defendant admits that it is a corporation engaged in operating a railroad substantially as alleged in said complaint; that on March 17th, 1888, said plaintiff was an employé of said defendant, as fireman; that on or about said March 17th, 1888, a collision occurred on defendant's railroad near Evaro, Montana Territory, but said defendant denies that it has any knowledge or information sufficient to form a belief as to the nature or extent of the injuries received by said plaintiff in said collision.

II.

For its second defense to the cause of action stated in said complaint said defendant alleges that said accident occurred on
5 or about March 17th, 1888; that on said date and for some time prior thereto one of the rules of the defendant duly in force and existing provided that between the hours of 7 o'clock in the afternoon and 7 o'clock in the forenoon all trains should consider themselves held for orders at all-night telegraph offices; that, in accordance with said rule, it was the duty of all trains on defendant's line of railroad to stop at all-night telegraph offices and receive a clearance order before proceeding past such night tele-

graph offices between the hours of 7 o'clock in the evening and 7 o'clock in the morning; that said station of Evaro, Montana Territory, is and was at the time of said accident a night telegraph office on the said defendant's line of railroad; that said plaintiff, at the time of said collision, was employed as a fireman on a train which was, at the time of said collision, at a point on defendant's railroad west of said station of Evaro, Montana Territory; that the engine which collided with the engine upon which plaintiff was employed as aforesaid was attached to a certain train, known as train No. 1, and which was proceeding westward on defendant's said railroad; that, in accordance with the rule hereinbefore mentioned, it was the duty of the persons operating said train No. 1 to stop said train at said station of Evaro, Montana Territory, and to receive at said station a clearance order permitting said train to pass said station; that it was the further duty of said train No. 1 to stop at said station of Evaro and not to pass beyond the same without receiving said clearance order; that said train No. 1, approaching said station of Evaro from the east, failed and
6 neglected to comply with said rule of said defendant and ran by said station of Evaro without stopping thereat, and met and collided with the engine upon which said plaintiff was working some distance west of said station of Evaro; that said collision was caused solely by negligence of the persons engaged in operating said train No. 1 and not by the negligence of said defendant; that the persons so engaged in operating said train No. 1 were fellow-servants of said plaintiff engaged in the same general employment, and that said plaintiff ought not to have complained in any action against said defendant on account of the negligence of such fellow-servants.

Wherefore said defendant prays to be hence dismissed with its costs and disbursements.

Dated September 26th, 1889.

JNO. C. BULLITT, JR.,
Attorney for Defendant, St. Paul, Minn.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Jno. C. Bullitt, Jr., came before me personally, and, being duly sworn, doth say that he is an officer, to wit, assistant counsel, of the defendant in the above-entitled action; that the foregoing answer is true of his own knowledge, except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

JNO. C. BULLITT, JR.

Subscribed and sworn to before me this 26th day of September, A. D. 1889.

[NOTARIAL SEAL.]

P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

(Endorsed:) 34743. State of Minnesota, district court, county of Ramsey. Geo. C. Ragsdale against Northern Pacific R. R. Co. Answer. Filed Sep. 27, 1889. R. T. O'Connor, clerk, by J. M. Redding, deputy clerk. Service of the within answer is hereby admitted this 26th day of September, A. D. 1889. McDonald & Barnard and M. E. Clapp, attorneys for pl'ff. J. Barnard.

7 STATE OF MINNESOTA, } ss:
County of Ramsey, }

District Court.

GEO. C. RAGSDALE, Plaintiff,
against
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Petition for Removal to United States Court.

To the honorable the court aforesaid:

The Northern Pacific Railroad Company, the defendant in the above-entitled action, respectfully shows it that it is a corporation organized and existing under the laws of the United States of America, to wit, that certain act of Congress, approved July 2, A. D. 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast, by the northern route," and the several subsequent acts and joint resolutions of Congress relating to the same subject-matter; that the above-entitled action has been commenced and is yet pending in this court; that the date of the commencement of said action was September 7th, A. D. 1889, and the same has not yet been tried, and that time to answer does not expire until September 27th, A. D. 1889; that the amount in controversy in the said suit exceeds the sum of two thousand dollars ($2,000), exclusive of costs, as will more fully appear by reference to the complaint therein, and that, by reason of the premises, the petitioner is entitled under the acts of Congress for such cases made and
8 provided to remove the said suit into the circuit court of the United States for the district of Minnesota for the proceedings therein, and to that *a*nd herewith tenders to this court proper and sufficient surety for the doing by it of the several things required by the said acts to be done upon the removal of a cause from a State court into a United States court.

Wherefore your petitioner prays that the said surety may be accepted and that this court proceed no further in the said cause, and that the same be transmitted to the circuit court of the United States for further proceedings therein.

JNO. C. BULLITT, JR.,
Attorney for Petitioner.

Dated September 26th, A. D. 1889.

STATE OF MINNESOTA, } ss:
Ramsey County, }

Personally came before the undersigned Jno. C. Bullitt, Jr., attorney for the petitioner in the foregoing petition, and, having been by me first duly sworn, did depose and say that the several allegations of the foregoing petition are true to the best of his knowledge, information, and belief.

JNO. C. BULLITT, JR.

Subscribed and sworn to before me on the 26th day of September, A. D. 1889.

[NOTARIAL SEAL.] P. P. STARIN,
Notary Public, Ramsey County, Minn.

(Endorsed:) 34743. State of Minnesota, district court, Ramsey county. Geo. C. Ragsdale, plaintiff, against The Northern Pacific R. R. Co., defendant. Petition for removal to U. S. court. Jno. C. Bullitt, Jr., att'y for petitioner, St. Paul, Minn. Filed Sept. 27, 1889. R. T. O'Connor, clerk, by J. M. Redding, deputy clerk.

9 STATE OF MINNESOTA, } ss:
County of Ramsey, }

GEO. C. RAGSDALE, Plaintiff,
against
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Bond on Removal to United States Court.

Know all men by these presents that we, Geo. W. Board, as principal, and F. W. Wilsey and J. H. Ames, as sureties of the Northern Pacific Railroad Company, are held and firmly bound unto Geo. C. Ragsdale, the plaintiff in the above-entitled suit, in the penal sum of five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we hereby bind ourselves and our executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated on the 26th day of September, A. D. 1889.

Whereas the said Northern Pacific Railroad Company has filed its petition in the court aforesaid, praying for the removal into the circuit court of the United States for the district of Minnesota of the above-entitled suit, under and by virtue of the acts of Congress for such cases made and provided:

Now, therefore, if the said Northern Pacific Railroad Company shall enter, in the circuit court of the United States for the district of Minnesota, on the first day of its next session hereafter,
10 copy of the record in the said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto,

I.

That at all times hereinafter mentioned the defendant above named was and now is a corporation duly created, organized, and existing under and by virtue of an act of Congress, with corporate name as above set forth, and is now and was at all times hereinafter mentioned as such corporation a common carrier of goods and passengers for hire and was the owner of and in possession and operation of a line of railway from the city of St. Paul, State of Minnesota, to Thompson Falls, in the Territory of Montana, and other points.

II.

Plaintiff further alleges that the accident and injuries hereinafter mentioned took place at and between Missoula, in said Territory of Montana, and a station called Arlee, and about one mile distant west of a station called Evro, in said Territory of Montana, and upon the main line of said defendant's railroad.

III.

Plaintiff further alleges that during all the times hereinafter mentioned and at the time of the accident and injury complained of he was not in any manner guilty of contributary negligence,
16 but was in everywise and at all times acting with due and proper care and caution, and was in all things in constant exercise thereof during all of said times.

IV.

Plaintiff further alleges that on the 17th day of March, A. D. 1888, he was employed as a servant for hire of the said defendant and as such servant was employed as a fireman on engine No. 181 of said defendants; that on the said 17th day of March and at Missoula, in the said Territory of Montana, and while he was employed in said capacity and in the line of his duty as such servant, he was ordered, directed, and requested by said defendant to go out upon the main line of said defendant's railroad on said engine No. 181, and to fire the same; that in pursuance of said order of said defendant this plaintiff went out with said engine; that said engine proceeded west upon the main line of said defendant's railroad to a point about a mile west of said station, Evro, in said Territory of Montana, and to a point upon said main line where the same makes a slight curve in the rocks, and just as this plaintiff had finished throwing coal into the fire-box of said engine he looked out of the window of said engine and observed another engine, No. 456, approaching said engine No. 181 from the west; that said engine No. 456 was coming east, and that said engine No. 181, upon which this plaintiff was employed, was going west; that at said point there were no switches nor anything whereby the said engines could pass; that both of said engines were running at a speed of about 18 miles per hour.

That at the time that this plaintiff first noticed said engine

No. 456 it was but a short distance from the engine upon
17 which said plaintiff was employed; that this plaintiff immediately called the attention of the engineer, one Lacy, in charge of engine No. 181, of the approaching danger and immediately jumped from said engine No. 181 to save himself from being instantly killed by the collision of said engines together upon said main line, which collision was at that time inevitable, as this plaintiff then thought and now believes, and which, in fact, did occur then and there; that in jumping from said engine, the same being run at a high rate of speed, this plaintiff was thrown upon the rocks and banks adjacent thereto, and that in so jumping and striking the rocks his right lower limb was broken between the ankle and knee, and the bone was protruded through the flesh, causing a severe wound.

V.

Plaintiff further alleges that the said accident and the collision of said engines together at said point, as above stated, was the fault and negligence of the said defendant, and that this plaintiff was unable to prevent the same, and that in so jumping from said train this plaintiff used his best judgment in trying to save himself from what he thought would be instant death.

VI.

Plaintiff further alleges that by reason of the aforesaid accident and injury so received on said right lower limb and the breaking — mangling thereof, the same had to be amputated and removed; that thereby this plaintiff lost the said right lower limb between the ankle and knee.

VII.

Plaintiff further alleges that said accident occurred between the hours of seven and nine in the afternoon of said 17th day of March; that it was in the winter, and the weather was cold and
18 storming; that the said defendant left this plaintiff at said point where said accident occurred for several hours, to wit, about eight hours, before he was removed to any place where he could be taken care of; that while this plaintiff was so disabled and injured and during said eight hours of severe cold he suffered a great loss of blood from said wound and break and was very weak from the effects of such loss of blood and the cold received at such time.

VIII.

Plaintiff further alleges that at the time of the injury complained of he was earning and was able to earn as salary the sum of seventy-five dollars per month, and that he has been unable to perform any work for the last eighteen months, and will be unable to perform any work for a long time to come, if he ever is able, which damage plaintiff pleads as special damages herein.

IX.

Plaintiff further alleges that by reason of the aforesaid accident and injury so received on said limb and the loss thereby he is now unable to use the same without a support, and alleges that he never will be able to use the same so as to follow his usual vocation or to do any other work without a support.

X.

Plaintiff further alleges that by the breaking and mangling of said right lower limb and the loss thereby, as above set forth, he has suffered damages in the sum of twenty-five thousand dollars, and that by reason of such injuries and sickness occasioned thereby he suffered damages by reason of the agonies and pains of body and mind and the loss of blood and bodily strength in the
19 sum of five thousand dollars.

Wherefore plaintiff demands judgment in his favor and against said defendant for the sum of thirty thousand dollars, and such other relief as may seem proper, besides his costs and disbursements.

McDONALD & BARNARD AND
M. E. CLAPP, *Plaintiff's Attorneys.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Geo. C. Ragsdale, being first duly sworn, says he is the plaintiff above named in the above-entitled action; that he has read the foregoing complaint, and that the same is true of his own knowledge.

(Signed) GEO. C. RAGSDALE.

Subscribed and sworn to before me this 6th day of September, A. D. 1889.

[SEAL.] W. H. McDONALD,
Notary Public, Ramsey Co., Minn.

20 And afterwards, on the 2nd day of December, 1889, came the plaintiff, by his attorneys, and filed his amended complaint in words and figures as follows, to wit:

21 United States Circuit Court, Western District of Minnesota.

GEORGE C. RAGSDALE, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

The plaintiff above named, for an amended complaint, respectfully shows to this court and alleges:

I.

That at all the time- hereinafter mentioned the defendant above named was and now is a corporation duly created, organized, and

existing under and by virtue of an act of Congress, with corporate name as above set forth, and is now and was at all the times hereinafter mentioned, as such corporation, a common carrier of goods and passengers for hire and was the owner of and in possession and operation of a line of railway from the city of St. Paul, State of Minnesota, to Thompson Falls, in the Territory of Montana, and other points.

II.

Plaintiff further alleges that the accident and injuries hereinafter mentioned took place at and between Missoula, in said Territory of Montana, and a station called Arlee, and about one mile distant west of a station called Evro, in said Territory of Montana, and upon the main line of said defendant's railroad.

22 III.

Plaintiff further alleges that during all the times hereinafter mentioned and at the time of the accident and injury complained of he was not in any manner guilty of contributory negligence, but was in everywise and at all times acting with due and proper care and caution, and was in all things in constant exercise thereof during all of said times.

IV.

Plaintiff further alleges that on the 17th day of March, A. D. 1888, he was employed as a servant for hire of said defendant, and as such servant was employed as a fireman on engine No. 181 of said defendant; that on the said 17th day of March, and at Missoula, in the said Territory of Montana, and while he was employed in said capacity and in the line of his duty as such servant, he was ordered, directed, and requested by said defendant to go out upon the main line of said defendant's railroad on said engine No. 181, and to fire the same; in pursuance of said order of said defendant this plaintiff went out with said engine; that said engine proceeded west upon the main line of said defendant's railroad to a point about a mile west of said station Evro, in said Territory of Montana, and to a point upon said main line where the same makes a slight curve in the rocks, and just as the plaintiff had finished throwing coal into the fire-box of said engine he looked out of the window of said engine and observed another engine, No. 456, approaching said engine No. 181 from the west; that said engine No. 456 was coming east, and that said engine No. 181, upon which said plaintiff was employed, was going west; that at said point there were no switches nor anything whereby said engines
23 could pass; that both of said engines were running at a speed of about 18 miles per hour.

That at the time that this plaintiff first noticed said engine No. 456 it was but a short distance from the engine upon which said plaintiff was employed; that this plaintiff immediately called the attention of the engineer, one Lacy, in charge on engine 181 of the

approaching danger and immediately jumped from said engine 181 to save himself from being instantly killed by the collisions of said engines together upon said main line, which collision was at that time inevitable, as the plaintiff then thought and now believes, and which in fact did occur then and there; that in jumping from said engine, the same being run at a high rate of speed, this plaintiff was thrown upon the rocks and banks adjacent thereto, and in so jumping and striking the rocks his right lower limb was broken between the ankle and knee, and the bone was protruding through the flesh, causing a severe wound.

V.

Plaintiff further alleges that the said accident and the collision of said engines together at said point as above stated was the fault and negligence of the said defendant, and that this plaintiff was unable to prevent the same, and that in so jumping from said train this plaintiff used his best judgment in trying to save himself from what he thought would be instant death.

Plaintiff further alleges that in all things pertaining to the employment of this plaintiff at the time of the accident he was acting under the orders of said defendant and its servants who were
24 superior in authority over this plaintiff and were in control both of the engine upon which this plaintiff was employed and the engine that it collided with.

VI.

Plaintiff further alleges that by reason of the aforesaid accident and injury so received on said right lower limb and the breaking and mangling thereof the same had to be amputated and removed; that thereby this plaintiff lost the said right lower limb between the ankle and knee.

VII.

Plaintiff further alleges that said accident occurred between the hours of seven and nine in the afternoon of said 17th day of March; that it was in the winter and the weather was cold and storming; that the said defendant left this plaintiff at said point where said accident occurred for several hours, to wit, about eight hours, before he was removed to any place where he could be taken care of; that while this plaintiff was so disabled and injured and during said eight hours of severe cold he suffered a great loss of blood from said wound and break and was very weak from the effects of such loss of blood and the cold received at such time.

VIII.

Plaintiff further alleges that at the time of the injury complained of he was earning and was able to earn as a salary the sum of seventy-five dollars per month, and that he has been unable to perform any work for the last eighteen months and will be unable to

perform any work for a long time to come, if he ever is able, which damage plaintiff pleads as special damages herein.

25 IX.

Plaintiff further alleges that by reason of the aforesaid accident and injury received on said limb and the loss thereby he is now unable to use the same without a support, an- alleges that he never will be able to use the same so as to follow his usual vocation or to do any other work without a support.

X.

Plaintiff further alleges that in the Territory of Montana, the place where this plaintiff sustained the said injuries, the said defendant is liable in damages to the plaintiff under chapter twenty-five of the Compiled Statutes of the Territory of Montana for -he year of 1887, entitled "Railroad corporation," and especially under section six hundred and nin-ty-seven of said chapter twenty-five; which said section is in the words and figures following, to wit:

"SEC. 697. That in every case the liability of the corporation to a servant or employé acting under the orders of his superior shall be the same in case of injury sustained by default or wrongful act of his superior, or to an employé not appointed or controlled by him as if such servant or employé were a passenger;" which statute of 1887 and chapter 25 and section 697 thereof plaintiff pleads, and alleges that the same was at the time of the accident and now is in full force and effect.

XI.

Plaintiff further alleges that by the breaking and mangling of said right lower limb and the loss thereby, as above set forth,
26 he has suffered damages in the sum of twenty-five thousand dollars, and *and* that by reason of such sickness and injuries occasioned thereby he has suffered damages by reason of the agonies and pains of body and mind and the loss of blood and bodily strength in the sum of five thousand dollars.

Wherefore plaintiff demands judgment in his favor and against said defendant for the sum of thirty thousand dollars, and such other relief as may seem proper, besides his costs and disbursements.

McDONALD & BARNARD AND
M. E. CLAPP, *Pl'ff's Att'ys.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

George C. Ragsdale, being first duly sworn, says that he is the plaintiff above named in the above-entitled action; that he has read the foregoing complaint, and that the same is true of his own knowledge.

GEORGE C. RAGSDALE.

Subscribed and sworn to before me this 2nd day of October, A. D. 1889.

W. H. McDONALD,
Notary Public, Ramsey County, Minnesota.

(Endorsed:) Amended complaint. Filed Dec. 2, 1889. Oscar B. Hillis, clerk.

27 And afterwards, on the 2nd day of December, 1889, came the plaintiff and filed his reply in words and figures as follows, to wit:

28 United States Circuit Court, Western District of Minnesota.

GEORGE C. RAGSDALE, Pl'ff,
against
NORTHERN PACIFIC RAILROAD COMPANY.

The plaintiff above named, replying to the answer of the above-named defendant to the amended complaint, denies any knowledge or information sufficient to form a belief as to the second defence in said answer contained and each and every part and portion thereof, and therefore denies the same.

Further replying to said answer, plaintiff denies each and every allegation in said answer contained wherein new matter is set up by way of defence or otherwise.

Wherefore plaintiff prays judgment as in his complaint contained.

McDONALD & BARNARD AND
M. E. CLAPP, *Plaintiff's Attorneys,*
304 *Grand Block, St. Paul, Minn.*

Received a true copy of the above reply this 18th day of Nov., 1889.

JNO. C. BULLITT, JR.,
Defendant's Attorney.

29 STATE OF MINNESOTA, } *ss:*
County of Ramsey, }

George C. Ragsdale came before me personally and, being duly sworn, doth say that he is the plaintiff in the above-entitled action; that the foregoing pleading is true.

GEORGE C. RAGSDALE.

Subscribed and sworn to before me on this 16th day of November, A. D. 1891.

[NOTARIAL SEAL.] W. H. McDONALD,
Notary Public, Hennepin Co., Minn.

(Endorsed:) Filed Dec. 2, 1889. Oscar B. Hillis, clerk.

30 And on the same day came the defendant, by John C. Bullitt, Jr., its attorney, and filed its amended answer in the words and figures as follows, to wit:

31 United States Circuit Court, District of Minnesota, *ss:*

GEORGE C. RAGSDALE, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Answer.

For its answer to the amended complaint herein the above-named defendant denies each and every allegation in said amended complaint contained and every part thereof save as hereinafter expressly admitted, qualified, or denied, and specifically denies that by reason of any of the matters or things in said amended complaint set forth said plaintiff has been damaged in the sum of $5,000.00 or any other sum. Said defendant admits that it is a corporation engaged in operating a railroad substantially as alleged in said amended complaint; that on March 17th, 1888, said plaintiff was an employé of said defendant as fireman; that on or about said March 17th, 1888, a collision occurred on defendant's railroad near Evaro, Montana Territory, and that at said time section 697 of the Compiled Statutes of Montana Territory was substantially as alleged in said amended complaint.

Said defendant denies that it has any knowledge or information sufficient to form a belief as to the nature or extent of the injuries, if any, received by said plaintiff in said collision.

32 Further answering, said defendant alleges that said accident occurred on or about March 17th, 1888; that on said date and for some time prior thereto one of the rules of the defendant, duly in force and existing, provided that between the hours of 7 o'clock in the afternoon and 7 o'clock in the forenoon all trains should consider themselves held for orders at all night telegraph offices.

That, in accordance with said rule, it was the duty of all trains on defendant's line of railroad to stop at all night telegraph offices and receive a clearance order before proceeding past such night telegraph office between the hours of 7 o'clock in the evening and 7 o'clock in the morning.

That said station of Evaro, Montana Territory, is and was at the time of said accident a night telegraph office on the said defendant's line of railroad.

That said plaintiff at the time of said collision was employed as a fireman on a train which was at the time of said collision at a point on defendant's railroad west of said station of Evaro, Montana Territory.

That the engine which collided with the engine upon which plaintiff was employed as aforesaid was attached to a certain train which was known as train No. 1, and which was proceedings westward on defendant's said railroad.

That, in accordance with the rule hereinbefore mentioned, it was the duty of the persons operating said train No. 1 to stop said train at said station of Evaro, Montana Territory, and to receive at said station a clearance order permitting said train to pass said
33 station; that it was the further duty of said train No. 1 to stop at said station of Evaro and not to pass beyond the same without receiving said clearance order; that said train No. 1, approaching said station of Evaro from the east, failed and neglected to comply with said rule of said defendant and ran by said station of Evaro without stopping thereat and met and collided with the engine upon which said plaintiff was working, between 7 o'clock p. m. and 7 o'clock a. m., some distance west of said station of Evaro.

That said collision was caused solely by the negligence of the persons engaged in operating said train No. 1, and not by the negligence of said defendant; that the persons so engaged in operating said train No. 1 were fellow-servants of said plaintiff, engaged in the same general employment, and that said plaintiff ought not to have or maintain any action against said defendant on account of the negligence of such fellow-servants.

Wherefore said defendant prays to be hence dismissed with its costs and disbursements.

Dated November 6th, 1889.

JNO. C. BULLITT, JR.,
Att'y for Defendant, St. Paul, Minn.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Jno. C. Bullitt, Jr., came before me personally and, being duly sworn, doth say that he is an officer, to wit, assistant counsel, of the defendant in the above-entitled action; that the foregoing answer is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

JNO. C. BULLITT, JR.

Subscribed and sworn to before me this 6th day of November, A. D. 1889.

P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

(Endorsed:) Answer. Filed Nov. 15th, 1889. Oscar B. Hillis, clerk.

34 And afterwards, to wit, on the 10th day of January, A. D. 1890, came the defendant and filed its answer in words and figures as follows, to wit:

35 Copy.

United States Circuit Court, District of Minnesota.

GEORGE C. RAGSDALE, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Amended Answer.

For its amended answer to the amended complaint herein the above-named defendant denies each and every allegation in said amended complaint contained, and every part thereof, save as hereinafter expressly admitted, qualified, or denied, and specifically denies that by reason of any of the matters or things in said amended complaint set forth plaintiff has been damaged in the sum of five thousand dollars ($5,000) or any other sum.

Said defendant admits that it is a corporation engaged in operating a railroad, substantially as alleged in said amended complaint; that on March 17th, 1888, and for some time prior thereto, said plaintiff was employed by said defendant as a fireman; that on or about said March 17, 1888, a collision occurred on defendant's railroad near Evaro, Montana, and that at said time section 697 of the Compiled Statutes of Montana Territory was substantially as alleged in said amended complaint. Said defendant denies that it has any knowledge or information sufficient to form a belief as to the nature or extent of the injuries of said plaintiff (if any) received in said collision.

36 Further answering, said defendant alleges that said accident occurred on or about March 17, 1888; that on said day and for some time prior thereto one of the rules of the defendant, duly in force and existing, provided that between the hours of seven in the afternoon and seven in the morning all trains should consider themselves held for orders at all night telegraph offices, and in accordance with said rule it was the duty of all trains on defendant's line of railroad to stop at all night telegraph offices and receive a clearance order before proceeding past such night telegraph office between the hours of seven in the afternoon and seven in the morning; that said station of Evaro, Montana, is and was at the time of said accident a night telegraph office of the said defendant's line of railroad; that it is further provided by said rule of defendant that all freight trains approaching stations where there are switches should approach the same with great caution, and the engineers of such trains should in passing such switches not run at a greater rate of speed than ten miles per hour; that there are several switches at said station of Evaro; that said plaintiff at the time of said collision was employed as a fireman on the train of defendant which was moving westward over its said line of railroad; that some distance ahead of said train upon which plaintiff was so employed there was a second train of defendant, known as train No. 1, which was also running westward on defendant's line of railroad; that it became and was necessary when said train No. 1 reached said Evaro to de-

tach one of the engines pulling the same, in order to switch
37 some cars at said station; that said train No. 1 stopped a short distance west of said station of Evaro, and that one of its engines was detached therefrom and ran back towards the east over a switch in order to get to the rear of said train No. 1; that after said engine had passed from said switch back upon the main line east of and in the rear of said train No. 1 and west of said station of Evaro the train upon which said plaintiff was employed as aforesaid as fireman ran into said engine, resulting in the collision mentioned in the amended complaint; that said train on which said plaintiff was employed, owing to the negligence and gross carelessness of the engineer thereof, one Lacey, approached said station of Evaro from the east and ran by the same at a rate of speed greatly in excess of ten miles per hour, and did not stop at said station of Evaro, but, on the contrary, in violation of the rules of defendant, was carelessly and negligently propelled and operated past said station by said Lacey, its engineer, and that it was so operated past said station of Evaro between the hours of seven in the afternoon and seven in the morning, to wit, at forty-five minutes past nine o'clock on the night of March 17, 1888; that said collision was caused solely by the negligence of said engineer of the train on which said plaintiff was employed and not by the negligence of said defendant; that said engineer was a fellow-servant of said plaintiff, engaged in the same general employment, and that said plaintiff ought not to have or maintain any action against said defendant on account of the negligence of said engineer.

38 Wherefore said defendant prays to be hence dismissed with its costs and disbursements.

JNO. C. BULLITT, JR.,
Attorney for Defendant, St. Paul, Minn.

39 *No.* 1. *Verification by Party.*

Copy.

STATE OF MINNESOTA, } *ss:*
County of Ramsey, }

Jno. C. Bullitt, Jr., came before me personally, and, being duly sworn, doth say that he is an officer, to wit, assistant counsel, of the defendant in the above-entitled action; that the foregoing amended answer is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

JNO. C. BULLITT, JR.

Subscribed and sworn to before me this 7th day of January, A. D. 1890.

[NOTARIAL SEAL.] P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

[Endorsed:] Copy. U. S. circuit court, district of Minnesota. Geo. C. Ragsdale against N. P. R. R. Co. Amended answer. Filed the — day of ——, A. D. 18—. —— ——, clerk. Copy. Jan. 7, '90. Jno. C. Bullitt, Jr., def't's attorney, St. Paul, Minn.

40 And afterwards, to wit, on the same day, the plaintiff files his reply in words and figures as follows:

41 United States Circuit Court, Western District of Minnesota.

GEORGE C. RAGSDALE, Pl'ff,
against
NORTHERN PACIFIC RAILROAD CO., Def't.

The plaintiff above named, replying to the answer of the defendant, denies any knowledge or information sufficient to form a belief as to the second defence in said answer contained, and each and every part and portion thereof, and therefore denies the same.

Further replying to said answer, plaintiff denies each and every allegation in said answer contained wherein new matter is set up by way of defence or otherwise.

Wherefore plaintiff prays judgment as in his complaint contained.

McDONALD & BARNARD AND
M. E. CLAPP, *Plaintiff's Attorneys,*
304 *Grand Block, St. Paul, Minn.*

STATE OF MINNESOTA, }
County of Ramsey. }

George C. Ragsdale, being by me first duly sworn, deposes and says that he is the plaintiff in the above-entitled action; that the foregoing reply is true to the best of his knowledge, information, and belief, except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

GEORGE C. RAGSDALE.

Subscribed and sworn to before me this 24th day of October, A. D. 1889.

[NOTARIAL SEAL.] W. H. McDONALD,
Notary Public, Ramsey County, Minnesota.

(Endorsed:) Filed Dec. 2, 1889. Oscar B. Hillis, clerk.

42 And afterwards, on the 10 day of July, the following stipulation waiving a jury was filed in the words following, to wit:

43 United States Circuit Court, District of Minnesota.

GEORGE C. RAGSDALE
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

A jury in the above-entitled action to assess the damages therein is hereby waived by both parties hereto.

Dated July 10th, 1890.

McDONALD & BARNARD,
F. D. LARRABEE, *Pl'ff's Att'ys.*
JNO. C. BULLITT, JR,
Def't's Att'y.

(Endorsed:) Stipulation waiving jury. Filed July 10th, 1890. Oscar B. Hillis, clerk.

44 And afterwards, to wit, on the same day, the plaintiff, by his attorneys, filed a demurrer to amended answer in words and figures as follows, to wit:

45 United States Circuit Court, District of Minnesota.

GEORGE C. RAGSDALE, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY.

Now comes said plaintiff and demurs to the amended answer of said defendant in the above-entitled action on the ground that said amended answer does not state facts sufficient to constitute defense to the cause of action set out in said plaintiff's complaint.

McDONALD & BARNARD AND
M. E. CLAPP, *Plaintiff's Attorneys.*

(Endorsed:) Demurrer to amended answer. Filed Jan'y 10th, 1890. Oscar B. Hillis, clerk.

46 And afterwards, on the 7th day of April, A. D. 1890, the decision of Judge Shiras sustaining demurrer to amended answer was filed in words and figures as follows, to wit:

47 In United States Circuit Court in and for District of Minnesota.

GEORGE C. RAGSDALE
vs.
NORTHERN PACIFIC RAILROAD COMPANY. } Law.

Action to recover damages for personal injuries.

Demurrer to answer.

McDonald and Barnard, M. E. Clapp, for plaintiff; John C. Bullitt, Jr., for defendant.

SHIRAS, *J.:*

In the amended complaint filed in this cause it is averred that on the 17th day of March, 1888, the plaintiff was in the employ of the defendant company as a locomotive fireman; that in the performance of his duty as such he was on that day required to go upon engine No. 181, which was pulling a train between Missoula and Arlee upon the line of defendant's road in the then Territory of Montana; that through the fault and negligence of the defendant a collision occurred between the train on which plaintiff was employed and another train belonging to defendant near the station called Evaro; that plaintiff, to avoid the danger of being crushed to death by the coming collision, jumped from the engine on which he was firing and received injuries resulting in the amputa-
48 tion of his right leg.

In the answer filed it is averred that by the rules of the company in force when the accident happened it was the duty of all trains on defendant's road to stop at all night telegraph offices and receive a clearance order before proceeding past such office between the hours of 7 p. m. and 7 a. m.; that under the rule it was the duty of the persons operating train No. 1 to stop at said station of Evaro and not to pass the same until the proper clearance order had been received; that, disregarding such rule, the persons operating said train No. 1 did not stop at said station, but proceeded on eastward until said train No. 1 met the engine on which plaintiff was riding and came in collision therewith; that the collision was caused by the negligence of the persons operating train No. 1; that such persons were fellow-servants with the plaintiff and for their negligence the defendant is not responsible.

The demurrer to the answer presents the question whether the facts therein averred show that the defendant company is not liable for the injuries received by plaintiff.

If the solution of the problem then presented was wholly dependant upon the determination of the question whether, under the rule of the common law, the plaintiff and those parties in charge of train No. 1 were fellow-servants, we would have presented the exact point which the Supreme — stated, but did not decide, in the case of The R. R. Co. *vs.* Ross, 112 U. S., 377.

In that case, an engineer was injured in a collision between two

trains, which resulted from the negligence of the conductor of each train. The Supreme Court held that the relation of fellow-servant did not exist between the engineer and the conductor of the train on which the engineer was employed, but did not pass upon
49 the question whether the conductor of the other train was or was not a fellow-servant with the injured engineer.

The conclusion reached in that case, to the effect that the engineer and conductor of the same train were not fellow-servants, is placed upon the ground that the conductor was charged with the duty of running the train, was in command of its movements, directed when it should stop and when it should proceed, had the general management thereof and control over the persons on the train, and must therefore be held to be the representative of the company, for whose negligence the latter would be responsible.

In the case at bar the answer avers that the collision was caused by the negligence of the parties in charge of train No. 1, whose duty it was to stop at the station and not to proceed beyond the same until the proper clearance order had been obtained. If the plaintiff had been a brakeman or fireman on train No. 1 and had been injured in the collision without fault on his own part, it is clear that under the rule recognized in the Ross case he would have had a right of recovery against the company, because the answer avers that the collision was due to the negligence of the parties in command of that train and who occupied the same relation to it that the conductor did in the Ross case. Is a different conclusion to be reached by reason of the fact that the plaintiff was a fireman upon engine No. 181? The Supreme Court holds that the conductor, having the control and management of the running of the train, is to be deemed to be the representative of the company and not a fellow-servant with the engineer and other employés on that train. So far as the running and management of the train under his control is concerned, does he cease to occupy such representative capacity under any circumstances?
50 Suppose in the collision in question the fireman upon train No. 1 had been injured as well as the plaintiff and both had brought suit to recover for the injuries received, under the rule laid down in the Ross case the court would be required in the one case to instruct the jury that the conductor in charge of train No. 1 was, by reason of the nature of his employment in connection with the train, the representative of the company for whose negligence the master would be liable.

Upon what theory could the court in the next case charge the jury that in the running and management of this train the conductor was not the representative of the company, but was, in fact, a fellow-servant with the employés upon the other train?

The control of the train is placed in the hands of the conductor in order that there should be some responsible person charged with the duty of properly moving the train—that is, of determining when the train shall stop and when it shall proceed with reference to meeting and passing other trains upon the road.

This power of control over the movements of a given train is not

conferred upon the conductor with sole reference to the safety of the train upon which he is acting as conductor. He is charged with the duty of so moving his own train as to secure not only its own safety, but also to aid in securing the safety of other trains which are moving upon the same portion of the line. In the management of his own train the conductor must ever bear in mind that there may be other trains upon the road, and to secure the safety of his own train and also of other trains he must as the representative of the company exercise due care to avoid collisions.

It is unquestionably the duty of the company in running
51 its trains to exercise due care to see that the movements thereof are so regulated that collisions shall be prevented.

For that purpose the defendant company adopted the rule set up in the answer providing that between the hours of 7 p. m. and 7 a. m. no train must pass beyond a telegraph station until it had received the necessary clearance order.

The conductor of train No. 1 was charged with the duty of observing this rule, not only for the protection of his own train, but also for the protection of any other train coming towards the station from the opposite direction.

The employés on train No. 1 had the right to rely upon the conductor for the proper observance of this duty, and if he negligently disobeyed the rule any employé suffering injury would, under the doctrine of the Ross case, have a right of action against the company.

The conductor was placed in control of the movements of the train, and by reason of the power thus conferred upon him he became the representative of the company in that particular.

The employés upon the other train, which was properly handled, had the right to expect of the company that it would, through its representatives, so control the movements of its other trains that the track would be left clear for the passage of the train going westward.

The company undertook to move train No. 1 eastward over the line between Missoula and Arlee at the same time that plaintiff's train was moving westward. Under such circumstances it was certainly the duty of the company to supervise and control the movements of both trains, so as to prevent a collision, and if, in the moving of train No. 1, the conductor was the representative of the company, it must follow that for negligence on part of the representative of the company the latter would be liable to any one injured thereby.

52 The negligent moving of train No. 1 would cause danger to the employés of both trains alike, and the company owed the same duty to the crews on each train. It is difficult to perceive any good ground, therefore, for holding that if the company through its representative, the conductor of train No. 1, was guilty of negligence in the moving of that train, thereby causing a collision, why any employé injured thereby would not have a right of action against the company irrespective of the question of which one of

the colliding trains he happened to be on at the time of receiving the injuries.

On part of plaintiff it is further claimed that the statute of Montana in force when the accident happened modifies the common-law rule in regard to the liability for the acts of fellow-servants. The statute, section 697 of the Compiled Statutes for 1887, is as follows:

"That in every case the liability of the corporation to a servant or employé acting under the orders of his superior shall be the same in case of injury sustained by default or wrongful act of his superior or to an employé not appointed or controlled by him, as if such servant or employé were a passenger."

This statute does not go to the length of abrogating the general rule that the master is not liable to an employé for the consequences of the negligence of a coemployé, but it does enact in effect that a superior is not a coemployé with an inferior, and that one may be a superior as compared with another even though the former does not control the latter.

The enactment is based upon the known fact that in carrying on the business of railroading there are recognized grades among the numerous classes of employés, and, whilst they all are working for a common master and for an ultimate common result, they are practically not all coservants.

53 The present plaintiff was a fireman, and his duties were limited generally to attending to the furnace and other matters upon the engine; he did not belong to that class of employés that were charged with the duty of controlling the movement of the trains.

The answer expressly avers that the collision was caused by the negligence of the officials in command of the movement of train No. 1, and there is no fact averred which tends to show that as to them the plaintiff occupied any other position than that of an inferior within the meaning of the statute of Montana.

The act of negligence set up in the answer is that train No. 1 was moved past the telegraph station in violation of the rule of the company, and it is averred that this was done by those in command of such train.

It will certainly not be claimed that a fireman upon the engine is an employé charged with the control of the moving of trains, a duty primarily imposed upon the conductor, and it is certainly the fair inference that in the moving and running of trains the conductor is the superior of a fireman.

In other words, the conductor or party charged with the control of the train is a superior as compared with a fireman within the meaning of the Montana statute.

Under this section the corporation is made liable to any one of its employés who, without negligence on his part, is injured by the default or wrongful act of a superior, even though the latter has no control over the former.

Whether, therefore, the liability of the defendant corporation is to be determined under the common-law rule or under the statute of Montana, the facts set forth in the answer do not show that the

act of negligence causing the collision and consequent injury to plaintiff was the act of a coemployé, but, on the contrary, it
54 would appear therefrom that such act of negligence was the act of the representative of the corporation, who was also the superior of the plaintiff.

This being the conclusion, it follows that the answer is insufficient, and the demurrer thereto is sustained.

55 UNITED STATES OF AMERICA, } *sct:*
District of Minnesota, }

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper-writing with the original thereof, which is in my custody as such clerk, and that such copy is a correct copy of such original and of the whole thereof in the cause therein named.

Seal U. S. Circuit Court, Dist. of Minnesota. Witness my hand as clerk and the seal of said court. Done at my office, in Saint Paul, Minnesota, this 19th day of April, A. D. 1890.

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy*.

[Endorsed:] 2.45. No. —. United States circuit court, district of Minnesota. George C. Ragsdale, plaintiff, *vs.* Northern Pacific Railroad Co., defendant. Certified copy of the decision of Judge Shiras.

56 And afterwards, on the 16th day of June, A. D. 1890, the following proceeding of court was had in the words following, to wit:

57 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1890, June 16th, 1890.

GEORGE C. RAGSDALE
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY. } E. Law. 737.

Plaintiff's demurrer to the second amended answer herein having been heretofore submitted to the Hon. O. P. Shiras, United States district judge, upon briefs:

Now, after due consideration thereof by said judge, he being fully advised concerning the same, and having filed his opinion sustaining said demurrer, it is by the court ordered that said demurrer be, and the same is hereby, sustained.

T. M., vol. 2, p. 4.

58 And afterwards, to wit, on June 16th, Judge Shiras filed his opinion in words and figures as follows, to wit:

59 SHIRAS, *J.:*

This cause has already been before the court on demurrer to the answer, and in the opinion then given it was held that, under the common-law rule and under the provisions of the statute of Montana, it could not be held that a fireman was a coemployé with the conductor of a train by whose negligence in controlling the movements of his train a collision was caused with the engine upon which the plaintiff was acting as fireman. By an amended answer now on file, it is averred that the collision was caused by the negligence of the engineer in charge of the engine upon which the plaintiff was acting as fireman, and that they were coemployés, and therefore the company is not liable. It is averred in the amended answer that the accident occurred on the 17th day of March, 1888; that on that day, and for some time prior thereto, the rules of the company provided that between the hours of seven in the evening and seven in the morning all trains should consider themselves held for orders at all night telegraph offices, and in accordance with said rule it was the duty of all trains on the defendant's line of railroad to stop at all night telegraph offices, and receive a clearance order, before proceeding past such office, between the hours named; that the rules of the defendant further provided that, in approaching stations whereat there are switches, all freight trains must move with great
60 caution, and that the engineers of such trains, in passing such switches, should not run at a rate of speed greater than 10 miles per hour; that the station of Evaro was a night telegraph and switch station; that train No. 1 stopped a short distance west of said station; that one of the engines propelling the same was then detached, and passed upon a switch in order to get to the rear of the train; that it then passed to the main line east of and in the rear of train No. 1, where it was run into by the train on which plaintiff was acting as fireman; "that said train on which said plaintiff was employed, owing to the negligence and gross carelessness of the engineer thereof, one Lacey, approached said station at Evaro from the east, and ran by the same at a speed greatly in excess of 10 miles per hour, and did not stop at said station at Evaro, but on the contrary, in violation of the rules of defendant, was carelessly and negligently propelled and operated past said station by said Lacey, its engineer, and that it was so operated past said station of Evaro between the hours of seven in the afternoon and seven in the morning, to wit, at 45 minutes past 9 o'clock on the night of March 17, 1888; that said collision was caused solely by the negligence of said engineer of the train on which said plaintiff was employed, and not by the negligence of defendant; that said engineer was a fellow-servant of said plaintiff, engaged in the same general employment, and that said plaintiff ought not to have or maintain any action against said defendant on account of the negligence of said engineer." In the original answer it was averred that the collision was caused by the negligence of those in charge of train No. 1; and in ruling upon the demurrer to that answer it was held that, under the doctrines announced by the Supreme Court in the case of

Railroad Co. *v.* Ross, 112 U. S., 377, 5 Sup. C't Rep., 184, the parties having control of the movements of train No. 1 could not be deemed to be fellow-servants with the employés upon engine No. 181. In the amended answer, now under consideration, it is averred that the collision resulted from negligence in the running of the train upon which plaintiff was employed, and thus the case is presented in an aspect more nearly resembling the facts of the Ross case. In the amended answer it is charged that the collision resulted from the violation of two rules of the company, to wit, running by the station without halting and obtaining the proper clearance order, and moving at a rate of speed greater than 10 miles per hour; and it is averred that the violation of these rules was due to the negligence of the engineer in charge of the engine upon which plaintiff was acting as fireman.

The principle recognized in the Ross case by the Supreme Court is that one who is charged with the control of the movement of the train, who directs when it shall start, at what speed it shall run, at what stations it shall stop, and for what length of time, or who, in other words, controls the movement of the train, is in no proper sense a fellow-servant with the fireman, the brakeman, or the engineer on such train. In that case a collision was caused by the negligence of the conductor in failing to communicate to the engineer an order which he had received, and the engineer was the
61 person injured. The court held that the relation of fellow-servants did not exist, and that the company was liable for the consequences of the negligence of the conductor. If, in the case now under consideration, it was averred that the collision was caused by the negligence of the conductor in controlling the movements of the train, there could be no question that it would be squarely within the rule recognized in the Ross case, and that the claim of plaintiff to recover could not be defeated by the plea that the accident resulted from the negligence of a coservant.

Does the fact that the collision in this case was caused by the negligence of the engineer change the relation of the parties? The solution of this question must be sought, not in the mere name applied to the one at fault, but in the relation he in fact occupied towards the company and the other trainmen in the performance of the duty devolved upon him, and in the doing of which he was guilty of negligence. It is apparent to every one, having any knowledge of the operation of railway trains, that there are two persons thereon who divide between them the responsibility of the actual movement of the train. These persons are the conductor and the engineer. While the duties of these two persons are widely different yet practically by the combination of both are the movements of the trains controlled, and in the management thereof they each in their respective places represent the company, and they are not fellow-servants with the other employés upon the train who are not charged with the management of the train, and have no control over the same. The brakeman, the fireman, and the porters upon the train are not coworkers with the conductor and the engineer in the control and running of the train. They have no voice in determining

the speed of the train, when it shall stop, when proceed, and other like matters. Touching all questions affecting the movements of the train, the relation of such employés towards the persons who have control over the movements of the train is that of inferior towards superior; the latter exercising absolute control, and the former owing the duty of obedience. According to the averments in the amended answer, two acts of negligence are charged upon the engineer, to wit, not halting at the station at Evaro and remaining there until the proper clearance order was received, and in passing the station at too great a speed. It is clearly inferable from the answer that the control and management of the train in these particulars was a duty resting upon the engineer. He it was who should have brought the train to a halt at the station, and in fact he practically was the only one who could so control the train as to bring it to a stop before passing the station. So, also, he it was who controlled the speed at which the train was moving when it reached the station. Thus the amended answer charges that the person who had the actual control over the movements of the train, and whose duty it was to observe the rules of the company in the particulars named, was guilty of negligence in the performance thereof; and I can see no substantial ground for holding that the engineer, in his relation to such movements of the train as are wholly under his control, occupied any different relation to the other subordinate employés on the train than is occupied by the conductor.

62 & 63 If, under the rules of the company, the conductor had been primarily charged with the duty of causing the train to halt at Evaro station, and he had neglected such duty, and the plaintiff had consequently suffered the injuries complained of, then, under the rule in the Ross case, the company would have been liable. The amended answer shows that the engineer was primarily charged with the duty of halting the train at Evaro station, and that he negligently failed in the performance of this duty. It seems to me that the same rule must be applied to the one case as to the other, and that the reason which sustains the liability of the company in case of the negligence of the conductor apply with equal force to the negligence of the engineer when such negligence occurred in a matter touching the actual movements of the train, and which was at the time wholly under the control of the engineer. In such matters the engineer represents the company, and for his negligence the company must respond. The demurrer is sustained.

64 And afterwards, on the 2nd day of July, A. D. 1890, the defendant filed its exceptions to the order sustaining the demurrer in words following, to wit:

65 United States Circuit Court, District of Minnesota.

GEORGE C. RAGSDALE, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Now comes the defendant in the above-entitled cause, by its counsel, and excepts to the order of the court herein, filed the 16th day of June, A. D. 1890, sustaining the demurrer to the second division of the third amended answer in said cause.

Dated July 1st, 1890.

JNO. C. BULLITT, JR.,
Attorney for Defendant.

The foregoing exception is hereby duly settled and allowed and made part of the order entered upon the record of said case.

O. P. SHIRAS,
Judge United States Circuit Court.

(Endorsed:) Exception to order sustaining demurrer. Filed July 2nd, 1890. Oscar B. Hillis, clerk.

66 And afterwards, on the 2nd day of July, A. D. 1891, the following proceeding of court was had in the words following, to wit:

67 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1890, July 2nd, 1890.

GEORGE C. RAGSDALE
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY. } E. Law. 737.

Ordered that the order heretofore entered herein, to wit, on June 16th, 1890, sustaining the demurrer to the second amended answer, be, and the same is hereby amended so as to read as follows: It is by the court ordered that said demurrer be, and it is hereby, sustained as to the second division of said answer and overruled as to the first division of said answer.

T. M., vol. 2, p. 54.

68 And afterwards, on the 10th day of July, A. D. 1890, the following proceeding of court was had in the words and figures following, to wit:

69 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1890, July 10th, 1890.

GEORGE C. RAGSDALE
vs.
NORTHERN PACIFIC RAILROAD COMPANY. } E. Law. 737.

This day come the parties herein, by their respective attorneys, and duly file a written stipulation waiving a jury herein, and in open court agree and stipulate that the plaintiff take judgment against the defendant for the sum of eight thousand dollars ($8,000.00), so stipulated and agreed to be due by the attorneys, besides his costs and disbursements herein, to be taxed, and that he have execution therefor.

Upon motion of defendant's attorney, it is ordered that execution herein be, and the same is hereby, stayed for a period of thirty (30) days from date hereof.

T. M., vol. 2, p. 81.

70 United States Circuit Court, District of Minnesota.

GEORGE C. RAGSDALE, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant. }

Stipulation.

It is hereby stipulated by and between the parties hereto that appeal bond, supersedeas bond, and all bonds necessary to perfect the appeal in this case are hereby waived by the plaintiff, and it is further stipulated that the appellant, The Northern Pacific Railroad Company, need not give any bond whatsoever in the case.

Dated June 30th, 1891.

McDONALD & BARNARD,
Attorneys for Plaintiff.
JNO. C. BULLITT, JR.,
Attorney for Defendant.

71 United States Circuit Court, District of Minnesota.

GEORGE C. RAGSDALE, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant. }

It is hereby stipulated that the record in the above-entitled case in T. M., vol. 2, page 81, being the term minutes of the June, 1890, term, July 10th, 1890, of said court, shall be corrected so as to read as follows:

This day comes the parties herein, by their respective attorneys, and, the amended answer of the defendant to the complaint herein having been demurred to by the plaintiff and said demurrer having been sustained by the court, it is in open court agreed between the

parties that the plaintiff has been damaged in the sum of eight thousand dollars ($8,000), and, said defendant having refused to amend its said amended answer, it is thereupon ordered by the court that judgment be entered in favor of the plaintiff and against the defendant for said sum of eight thousand ($8,000) dollars.

Upon motion of defendant's attorney, it is hereby ordered that execution herein be, and the same is hereby, stayed for the period of thirty (30) days from date hereof.

This stipulation is made for the reason that the stipulation entered upon the records is incorrect.

Dated June 29th, 1891.

McDONALD & BARNARD,
Plaintiff's Attorneys.
JNO. C. BULLITT, JR.,
Defendant's Attorney.

72 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 72 pages, numbered consecutively from 1 to 72, inclusive, is a true and complete transcript of the records, process, pleadings, orders, and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court, and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 22nd day of July, A. D. 1891.

OSCAR B. HILLIS, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

[Endorsed:] United States circuit court, district of Minnesota, third division. George C. Ragsdale *vs.* Northern Pacific Railroad Company. Return to Supreme Court.

Endorsed on cover: (Case No. 14,931.) Minnesota C. C. U. S. No. 344. The Northern Pacific Railroad Company, plaintiff in error, *vs.* George C. Ragsdale. Filed November 13, 1891.